

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

HECTOR MARTINEZ,)
)
)
Plaintiff,)
)
-vs-) Case No. CIV-11-830-F
)
)
UNITED STATES OF AMERICA,)
)
)
Defendant.)

ORDER

United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation on April 26, 2012, recommending that defendant's motion to dismiss be granted on plaintiff's claim pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), and be denied in all other respects. Magistrate Judge Bacharach also recommended that the court grant plaintiff one month to effect service of process; order the clerk to issue alias summons; and order the marshals service to send the summons, complaint and transfer order to the Attorney General of the United States via registered or certified mail. In the Report and Recommendation, Magistrate Judge Bacharach advised the parties of their right to object to the suggested ruling by May 14, 2012 and that failure to timely object would foreclose appellate review of the suggested ruling.

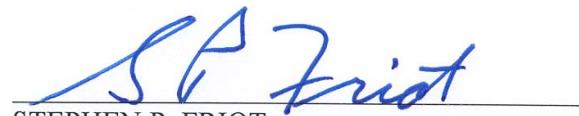
To date, the court has not received an objection to the Report and Recommendation. The record reflects that the Report and Recommendation was returned undeliverable to plaintiff. However, under the court's Local Civil Rule 5.4(a), papers sent by the court will be deemed delivered if sent to the last known address given to the court. As the Report and Recommendation was sent to the last known address of plaintiff, the Report and Recommendation is deemed delivered.

With no objection to the Report and Recommendation being filed within the time prescribed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Robert E. Bacharach on April 26, 2012 (doc. no. 30) is **ACCEPTED, ADOPTED** and **AFFIRMED**. Defendant's Motion to Dismiss, filed March 26, 2012 (doc. no. 21), is **GRANTED** in part and **DENIED** in part. Plaintiff's claim pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), is **DISMISSED** under Rule 12(b)(6), Fed. R. Civ. P., for failure to state a valid claim. Plaintiff's negligence claim under the Federal Tort Claims Act, 28 U.S.C. §§ 1346 and 2671-2680, remains pending.

Plaintiff is **GRANTED** one month from the date of this order to effect service of process upon the Attorney General of the United States. The clerk of the court is **ORDERED** to issue an alias summons for the Attorney General of the United States. The Marshals Service is **ORDERED** to send the alias summons, complaint, the transfer order and a copy of this order to the Attorney General of the United States via registered or certified mail.

DATED May 23, 2012.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE